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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
13

14 ANTHONY OLIVER,

15 Plaintiff,

16 vs.

17 SQUARE, INC.,

18 Defendant.
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Case No. 3:19-cv-04110-RS

**DEFENDANT SQUARE, INC.'S
ADMINISTRATIVE MOTION TO
EXTEND DEADLINE TO ANSWER OR
OTHERWISE RESPOND TO
PLAINTIFF'S COMPLAINT UNTIL 14
DAYS AFTER THE COURT RULES ON
DEFENDANT'S MOTION TO REVOKE
AND DISMISS PURSUANT TO 28 U.S.C.
§ 1915(g)**

[Filed concurrently with Rose Ehler's
Declaration In Support of Motion to Extend
Deadline]

Judge: Hon. Richard Seeborg
Crtrm.: 3, 17th Floor

STATEMENT OF RELIEF SOUGHT

Pursuant to Civil L.Rs. 6-3 and 7-11, Defendant Square, Inc. (“Square”) seeks an order extending its deadline to respond to Plaintiff Anthony Oliver’s Complaint, which is currently set for December 30, 2019, to fourteen (14) days after the Court adjudicates Square’s motion under 28 U.S.C. § 1915(g) to revoke Plaintiff’s *in forma pauperis* status and dismiss the Complaint without prejudice, assuming the case is not resolved by that motion.

STATEMENT OF ISSUE TO BE DECIDED

1. Whether the Court should extend Square’s deadline to answer or otherwise respond to Plaintiff’s Complaint until 14 days after the Court rules on Square’s motion under 28 U.S.C. § 1915(g).

ARGUMENT

Square’s response to Plaintiff’s Complaint is currently due on December 30, 2019. *See* Dkt. 28. However, Plaintiff is currently incarcerated and subject to the Prisoner Litigation Reform Act (“PLRA”), which may bar Plaintiff from proceeding with this action *in forma pauperis* and require dismissal. 28 U.S.C. § 1915(g). Square respectfully requests an extension of fourteen (14) days to respond to Plaintiff’s Complaint, after the Court addresses Square’s concurrently filed Motion to Revoke and Dismiss Pursuant to 28 U.S.C. § 1915(g). Square’s request is supported by the Declaration of Rose Leda Ehler (“Ehler Decl.”), which addresses the matters identified in Civil L.R. 6-3(a)(1)-(6), as well as the following reasons:

Request for Extension (Civil L.R. 6-3(a)(1)): Square has concurrently filed a Motion to Revoke and Dismiss Pursuant to 28 U.S.C. § 1915(g) that, if granted, would require dismissal of this action. Ehler Decl. ¶ 2. Square respectfully requests the Court rule on that motion to avoid the likely unnecessary cost to Square of further investigation required to respond to Plaintiff’s Complaint.

Section 1915(g) of the PLRA forbids a prisoner from bringing an *in forma pauperis* civil action in federal court “if the prisoner has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that

1 it is frivolous, malicious, or fails to state a claim upon which relief can be granted, unless the
 2 prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Here,
 3 Plaintiff has filed a *pro se* civil action against Square in federal court and seeks to proceed *in*
 4 *forma pauperis*. As recognized in *Oliver v. Kemp*, No. 1:19-CV-5014-TCB-JFK (N.D. Ga. Nov.
 5 20, 2019), ECF No. 4, *report and recommendation adopted, id.* (N.D. Ga. Dec. 11, 2019), ECF
 6 No. 6, “Plaintiff, while incarcerated, has filed at least three civil actions that have been dismissed
 7 as frivolous, malicious, or for failure to state a claim,” and is therefore subject to the § 1915(g)
 8 prohibition. *Id.* at 2.

9 **Square’s Efforts to Obtain a Stipulation (Civil L.R. 6-3(a)(2)):** Plaintiff is currently
 10 incarcerated and has not provided the Court with a phone number. He has only a mailing address:
 11 #1002060648, Calhoun State Prison, Post Office Box 249, Morgan, Georgia 39866. Dkt 18.
 12 Given that (1) Square’s counsel cannot call Plaintiff; (2) Plaintiff has already, without basis,
 13 threatened to file Rule 11 motions and state bar complaints against Square’s counsel¹; and (3)
 14 Plaintiff’s Complaint could be dismissed as a result of Square’s § 1915(g) motion, Square believes
 15 any attempt to stipulate to an extension pending resolution of Square’s § 1915(g) motion would be
 16 futile. Ehler Decl. ¶ 4.

17 **Prejudice if Extension Is Denied (Civil L.R. 6-3 (a)(3)):** Square would suffer
 18 unnecessary harm if this Court denied this motion because filing a responsive pleading by the
 19 current deadline would require Square to expend substantial time, energy, and resources preparing
 20 a response to an action that may be statutorily barred. Ehler Decl. ¶ 3. Moreover, adjudicating
 21 Oliver’s *in forma pauperis* status before addressing anything else conserves judicial resources as
 22 resolution of this initial threshold issue may discourage meritless filings. *Id.*

23 **Previous Time Modifications (Civil L.R. 6-3(a)(5)):** Square’s response to Plaintiff’s
 24 Complaint was originally due on December 9, 2019—21 days after Plaintiff’s Complaint was
 25 filed. *See* Fed. R. Civ. P. 12(a)(1)(A)(i). On December 4, 2019, Square filed a motion for an
 26 extension of time to file Answer based in part upon Square’s recent retention of counsel and the

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 28 ¹ Plaintiff sent a letter dated December 12, 2019, to counsel for Square (attached as **Exhibit A** to
 the concurrently filed Declaration of Rose Leda Ehler).

1 need to conduct a more thorough factual investigation. On December 9, 2019, Judge James
2 Donato, who was previously assigned to this matter, granted the motion and ordered Square's
3 deadline to respond to Plaintiff's Complaint be moved to December 30, 2019. Ehler Decl. ¶ 5.

4 **Effect of Extension on Case Schedule (Civil L.R. 6-3(a)(6)):** This extension of the
5 deadline to answer or otherwise respond will have no impact on the rest of the timeline of the case,
6 and the request is not made for any improper purpose. Ehler Decl. ¶ 6. Rather, Square requests
7 the Court extend the deadline to answer or otherwise respond to ensure that this case proceeds as
8 efficiently as possible without unnecessary expenditure of the time and resources of the Court or
9 any party.

10 **CONCLUSION**

11 Accordingly, for the reasons set forth above and in the attached Declaration of Rose Ehler,
12 Square respectfully requests the Court enter an order extending Square's time to respond to
13 Plaintiff's Complaint to fourteen (14) days after Defendant's Motion to Revoke and Dismiss
14 Pursuant to 28 U.S.C. § 1915(g) is decided.

15
16 DATED: December 18, 2019

MUNGER, TOLLES & OLSON LLP

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18 By: /s/ Rose Leda Ehler

19 ROSE LEDA EHLER

20 Attorneys for Defendant Square, Inc.
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